



## Tidetime Sun (Group) Limited (Re), 2010 CanLII 75255 (ON SEC)

Date: 2010-12-14

Citation: Tidetime Sun (Group) Limited (Re), 2010 CanLII 75255 (ON SEC),  
<<http://canlii.ca/t/2f1k5>>, retrieved on 2019-11-19

### Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - National Instrument 43-101 - Applicant granted relief from certain requirements of NI 43-101 in respect of disclosure made in and in connection with an offering memorandum for a private placement - Relief subject to conditions.

### Applicable Legislative Provisions

National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, s. 9.1

December 14, 2010

### IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO (THE “JURISDICTION”)

AND

### IN THE MATTER OF THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

### IN THE MATTER OF TIDETIME SUN (GROUP) LIMITED (THE “FILER”)

### DECISION

### Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the “**Legislation**”) pursuant to subsection 9.1(1) of National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* (“**NI 43-101**”) that the Filer be exempt from the requirement in section 2.2 of NI 43-101 that the Filer must disclose any information about a mineral resource or mineral reserve using only the meanings ascribed to those terms by the Canadian Institute of Mining Metallurgy and Petroleum (**CIM**), with respect to the disclosure made in the Offering Memoranda (as defined below) prepared by the Filer for the Canadian Offering (as defined below) (the “**Exemption Sought**”);

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (“**MI 11-102**”) is intended to be relied upon in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island,

Newfoundland, Northwest Territories, Yukon and Nunavut (collectively and with the Jurisdiction, the “**Jurisdictions**”).

## Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

## Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a limited liability company incorporated pursuant to the laws of Bermuda with its head office in Hong Kong.
2. The Filer is not a reporting issuer in any of the Jurisdictions, nor are any of its securities listed or posted for trading on any stock exchange in Canada. The Filer has no present intention of becoming a reporting issuer in any of the Jurisdictions or of becoming listed on an exchange in Canada.
3. The authorized share capital of the Filer consists of 66,000,000,000 ordinary shares (the “**Ordinary Shares**”) and 2,000,000,000 convertible preferred shares (“**Preferred Shares**”); however, the Filer is proposing to increase its authorized share capital to 100,000,000,000 Ordinary Shares and 2,000,000,000 Preferred Shares. The securities of the Filer are currently listed on the main board of the Stock Exchange of Hong Kong Limited (“**HKSE**”).
4. The Filer is principally engaged in multi-media product and components trading business. The Filer has been aware of the limitation of growth and development in its operating segments, currently the multi-media product and component trading segment, following the disposal of the Filer’s broadcasting and content production segment on July 16, 2010. Accordingly, the Filer has been searching for investment opportunities in the natural resources sector. To this end, the Filer has identified Up Energy Investment (China) Ltd. (the “**Target**”) as an appropriate acquisition target.
5. The Filer entered into an acquisition agreement dated July 22, 2010 (as supplemented by the first supplemental agreement on September 20, 2010 and the second supplemental agreement dated November 23, 2010) between the Filer and Up Energy Holding Ltd., pursuant to which the Filer will acquire shares, representing no less than approximately 99.19% (on a fully diluted basis) effective interest in the Target (the “**Acquisition**”).
6. In connection with the Acquisition, the Filer has prepared and will deliver to its shareholders a shareholders’ circular of the Filer that describes the Acquisition (the “**Shareholders Circular**”) which will be prepared in accordance with the Hong Kong law and the rules and regulations of the HKSE and is required to be approved by the HKSE and the Securities and Futures Commission of Hong Kong.
7. After the successful completion of the Acquisition, the Target and its subsidiaries (the “**Target Group**”) is expected to be a vertically-integrated coal operator whose planned operations consist of integrated upstream coal mining and preparation and downstream coking. The Target Group’s three mines, namely the Shizhuanggou mine, the Quanshuigou mine and the Xiaohuangshan mine located in Xinjiang Uygur Autonomous Region of the People’s Republic of China, provide access to a large coal resources base.
8. In connection with the Acquisition, the Filer intends to offer 21,000,000,000 new Ordinary Shares of the Filer in an underwritten public offering of Ordinary Shares in Hong Kong (the “**HK Public Offering**”) and on a private placement basis to purchasers in certain other jurisdictions including the United States and Canada (the “International Placing and together with the HK Public Offering, the “**Global Offering**”).
9. As part of the Global Offering, the Company will be offering its Ordinary Shares to accredited investors in Canada on a private placement basis (the “**Canadian Offering**”). The Canadian Offering will be made only to accredited investors in reliance on the exemption in section 2.3 of National Instrument 45-106 *Prospectus and Registration Exemptions* (“**NI 45-106**”).
10. Citigroup Global Markets Asia Limited is acting as underwriter for the HK Public Offering and Citigroup Global Markets Ltd. is acting as underwriter for the International Placing.

11. Purchasers in the Global Offering will receive an offering circular (the “**Offering Circular**”) that contains the Shareholders Circular.
12. An independent technical report (the “**ITR**”) on the coal resources and reserves at the Shizhuanggou mine, the Quanshuigou mine and the Xiaohuangshan mine (collectively, the **Mines**) has been prepared for the Filer by John T. Boyd Company of Pittsburgh, Pennsylvania (“**JTBC**”) and will be included in its entirety in the Offering Circular.
13. The ITR was prepared by James F. Kvitkovich of JTBC, a Registered Professional Engineer within the United States and a Registered Member of the Society of Mining, Metallurgy, Exploration, Inc., who is a “qualified person” and is independent of the Filer for the purposes NI 43-101.
14. JTBC has prepared the ITR (including the estimates of mineral resources and ore reserves set out therein) in accordance with, among other things, the Australasian Code for Reporting of Mineral Resources and Ore Reserves (the “**JORC Code**”) published by the Joint Ore Reserves Committee (“**JORC**”) of the Australasian Institute of Mining & Metallurgy, Australian Institute of Geoscientists, and Minerals Council of Australia.
15. In connection with the Canadian Offering, the Filer intends to distribute to accredited investors in Canada a preliminary offering memorandum (the “**Preliminary Offering Memorandum**”) and a final offering memorandum (the “**Offering Memorandum**”, and with the Preliminary Offering Memorandum, the “**Offering Memoranda**”) containing the Offering Circular (including the ITR) and any additional disclosure required pursuant to the laws of the provinces and territories of Canada, including disclosure relating to resale restrictions and statutory rights of action.
16. As of the date of this decision, the Filer has not distributed the Offering Memoranda to prospective investors.
17. Immediately after the Global Offering, less than 10% of the Ordinary Shares will be held by residents of Canada.
18. The Filer expects that the majority of its Canadian security holders will be resident in Ontario on the completion of the Canadian Offering.
19. The Filer will deliver the Offering Memoranda in each Jurisdiction and within the time limit specified in NI 45-106 or OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*, as applicable.
20. The Filer is not in default of securities legislation in any jurisdiction.
21. The Mines are mineral projects as defined in section 1.1 of NI 43-101. The Offering Memoranda will include information about the coal resources and reserves at the Mines and will make reference to the ITR. The Offering Memoranda will be subject to the requirements of NI 43-101, including the requirement in section 2.2 of NI 43-101, which provides that an issuer must not disclose any information about a mineral resource or mineral reserve unless the disclosure uses only the meanings ascribed to those terms by CIM. Absent the Exemption Sought, the Offering Memoranda will not comply with the requirements of section 2.2 of NI 43-101 because the disclosure regarding the Mines’ coal resources and reserves will have been prepared in accordance with the JORC Code.
22. Section 7.1 of NI 43-101 provides a statutory exemption substantially similar to the Exemption Sought. The Filer cannot avail itself of the statutory exemption in section 7.1 of NI 43-101 because the ITR is not a technical report as defined in NI 43-101. Under section 1.1 of NI 43-101, a “technical report” means, among other things, a report prepared and filed in accordance with NI 43-101. The ITR is not a “technical report” as defined in NI 43-101 because it is not a report prepared and filed in accordance with NI 43-101.
23. The Offering Memoranda will be distributed solely to accredited investors in Canada and its distribution will not trigger any requirement to file a technical report under section 4.2 of NI 43-101.

## Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Offering Memoranda are distributed solely to, and all purchasers under the Canadian Offering are, “accredited investors”, as defined in NI 45-106;
- (b) less than 10% of the Ordinary Shares are held by residents of Canada after the Global Offering;
- (c) at the time the Offering Memoranda are distributed to accredited investors in Canada:
  - (i) the Filer is incorporated pursuant to the laws of Bermuda with its head office in Hong Kong;
  - (ii) the Filer is not a reporting issuer in any of the Jurisdictions; and
  - (iii) the Filer has not been, and is not as a result of the distribution of the Offering Memoranda, subject to any requirement to file a technical report under NI 43-101; and
- (d) the Offering Memoranda include the following statement:

The Canadian regulatory authorities have exempted the issuer from the requirement in National Instrument 43-101 - *Standards for Disclosure of Mineral Properties* (“**NI 43-101**”) that the disclosure regarding mineral reserves and mineral resources in this Offering Memorandum be prepared in compliance with the definitions and standards of the Canadian Institute of Mining, Metallurgy and Petroleum (the “**CIM Standards**”).

The scientific and technical information on the Quanshuigou, Shizhuanggou, and Xiaohuangshan mining right areas and mines located in located in Xinjiang Uygur Autonomous Region of the People’s Republic of China, which is contained in this offering memorandum, was prepared in compliance with the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the “**JORC Code**”) published by the Joint Ore Reserves Committee of the Australasian Institute of Mining & Metallurgy, Australian Institute of Geoscientists, and Minerals Council of Australia. In the opinion of John T. Boyd Company (“**JTBC**”) in the context of the Quanshuigou, Shizhuanggou, and Xiaohuangshan mining right areas and mines located in Xinjiang Uygur Autonomous Region of the People’s Republic of China (i) the definitions and standards of the JORC Code are substantively similar to the CIM Standards, which are recognised by the Canadian regulatory authorities and contained in NI 43-101; and (ii) a reconciliation of mineral resources and mineral reserves prepared in compliance with the JORC Code would not result in a materially different mineral resources and mineral reserves as prepared in compliance with the CIM Standards.

“Jo-Anne Matear”  
Assistant Manager, Corporate Finance  
Ontario Securities Commission